A&E Partners Holding, LLC et al v. IAC/Interactive Corp. Doc. 5 Att. 1

Exhibit A

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

A&E PARTNERS HOLDING, LLC and A&E PARTNERS HOLDING I, LLC,

Plaintiffs,

v.

IAC/INTERACTIVE CORP. f/k/a USA INTERACTIVE,

Defendant.

Index No. 105288/2008

SUMMONS

Plaintiffs' designates New York County as the place of trial. The basis of the venue is New York County is Plaintiffs' place of business pursuant to C.P.L.R. §503(c).

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York).

In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

New York, New York
DATED: April 2, 2008

COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.
Attorneys for Plaintiffs

By: ______________________________
Leo V. Leyva
900 Third Avenue
16th Floor
New York, NY 10022
(212) 752-8000

TO: IAC/Interactive Corp.
555 West 18th Street
New York, New York 10011

45519/0001-1516542v1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

A&E PARTNERS HOLDING, LLC and A&E PARTNERS HOLDING I, LLC, Plaintiffs, -against- IAC/INTERACTIVE CORP. f/k/a/ USA INTERACTIVE, Defendants	Index No. **COMPLAINT**

Plaintiffs, A&E Partners Holding, LLC ("A&E Partners") and A&E Partners Holding I, LLC ("A&E Partners I" and together with A&E Partners, collectively referred to herein as "A&E"), by their attorneys, Cole, Schotz, Meisel, Forman & Leonard, P.A., complaining against Defendant, IAC/Interactive Corp. f/k/a/ USA INTERACTIVE ("IAC"), alleges and states as follows:

PARTIES

1. A&E Partners and A&E Partners I are limited liability companies organized under the laws of the State of Delaware. A&E has its principal place of business at 450 Seventh Avenue, 45th Floor, New York, NY 10123.

2. Upon information and belief, IAC is and at all relevant times was a corporation incorporated and organized under the laws of the State of Delaware, and maintains its principal place of business at 555 West 18th Street, New York, NY 10011.

FACTS COMMON TO ALL CLAIMS

3. Pursuant to a written lease agreement dated March 14, 2003 (the "Lease"), between Parker Real Estate Partners III, LLLP ("Parker"), as landlord, and PRC LLC, formerly known as Precision Response Corp ("PRC"), as tenant, Parker leased to PRC a certain parcel of land with buildings and improvements thereon located at 19500 South Dixie Highway, Cutler Ridge, Miami Dade County, Florida 33157 (the "Premises").

4. On May 11, 2007 Parker assigned the Lease to A&E..

5. IAC guaranteed PRC's performance and obligations under the Lease pursuant to a Guaranty (the "Guaranty").

6. Article 3, Section 3.01 of the Lease, titled "Payment of Taxes and Assessments," requires PRC to pay, among other things, real estate taxes with respect to the Premises:

> 3.01 During the Term Tenant shall, as additional rent, pay to the taxing authority directly. . .before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the non payment thereof, all taxes (including ad valorem real property taxes, personal property and sales taxes, if any), assessments, water and sewer rents, rates and charges, transit taxes, charges for public utilities, excises, levies, license and permit fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on the Demised Premises. . . .

7. Pursuant to Article 31, Section 31.01 of the Lease, titled "Guaranty, Financial Statements and Audits," IAC agreed to absolutely, irrevocably and unconditionally the Lease:

> 31.01 This Lease shall be absolutely, irrevocably and unconditionally guaranteed by USA Interactive, a Delaware Corporation (jointly and severally and collectively the "Guarantor") to secure Tenant's payment and faithful performance of each of Tenant's obligations under this Lease. Guarantor shall execute and deliver to Landlord prior to the Lease Effective Date the form of Guaranty attached hereto as Schedule C, which

> Guaranty shall be executed and delivered to Landlord on the Lease Effective Date.

8. In turn, Section 2 of the "Guaranty" provides:

> 2. The Guarantor hereby absolutely, irrevocably and unconditionally guarantees (as a primary obligor and not merely as a surety) to Landlord, its successors, assigns and participants the full and prompt payment of all sums due and payable to the Landlord under the Lease on the dates same shall become due and payable, whether by lapse of time, acceleration of maturity or otherwise. The Guarantor hereby agrees that if Tenant shall fail to pay the sums due under the Lease in accordance with its terms, then the Guarantor shall fully and punctually make such payments and, if there shall be a default under any provision of any of the Lease, then the Guarantor shall satisfy such obligation and cure any such default.

9. Section 3 of the "Guaranty" states, in pertinent part:

> 3. The obligations, covenants, agreements and duties of the Guarantor under this Guaranty shall in no way be affected or impaired by: (i) the modification or amendment (whether material or otherwise) of any of the obligations of Tenant; (ii) the voluntary or involuntary bankruptcy or rejection of the Lease by a trustee or debtor in bankruptcy, assignment for the benefit of creditors, reorganization, or other similar proceedings affecting Tenant; (iii) the release of Tenant from performance or observance of any of the agreements, covenants, terms or conditions contained in this Guaranty or under the Lease by the operation of law including, but not limited to, the release of Tenant's obligation to pay interest of attorney's fees. . . .

10. The combined ad valorem taxes and non-ad valorem assessments for the Premises for the 2007 calendar year were $244,755.57 (the "Assessment"). The Assessment had to be paid by March 31, 2008.

11. On January 23, 2008, PRC filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Southern District of New York.

12. PRC did not pay the Assessment on March 31, 2008, despite due demand by A&E.

13. Sections 6.01 and 6.02 of the Lease, titled "Landlord's Rights to Perform Tenant's Covenants," state, in pertinent part:

> 6.01 If Tenant shall at any time fail to pay any Imposition in accordance with the provision of Article 3 hereof, or to take out, pay for, maintain or deliver any of the insurance policies provided for in Article 5 hereof, or shall fail to make any other payment or perform any other material act on its part to be made or performed, then Landlord, after ten (10) days' written notice to Tenant describing the alleged failure and the actions required by Tenant to cure such failure (or without notice in case of an emergency or failure to provide any insurance) and without waiving or releasing Tenant from any obligations of Tenant contained in this Lease, may (but shall be under no obligation to): (a) pay any Imposition payable by Tenant pursuant to the provisions of Article 3 hereof or (b) take out, pay for and maintain any of the insurance policies provided for in Article 5 hereof, or (c) make any other payment or perform any other act on Tenant's part to be made or performed as in this Lease provided. . . .
>
> 6.02 All reasonable sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the Default Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost and expense (but in no event earlier that ten (10) days after Landlord's written notice to Tenant), shall constitute additional rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand, and Landlord shall not be limited in the proof of any damages. . . .

14. Exercising its rights and remedies under Article 6 of the Lease, A&E paid the Assessment.

15. Under the terms of the Lease and the Guaranty, IAC is liable to A&E for the Assessment and all costs and expenses incurred by A&E in connection with the payment thereof, together with any interest thereon at the default rate and attorneys fees.

FIRST CAUSE OF ACTION
(Breach of Guaranty)

16. A&E repeats and realleges the allegations set forth in paragraphs 1 through 15 above, as if the same were fully set forth herein.

17. In light of PRC's anticipatory repudiation and despite due demand, IAC has failed to pay or agree to pay the taxing authority or in the alternative A&E on PRC's behalf.

18. Based upon the foregoing, IAC is directly liable to A&E in the amount of $244,755.57, all costs and expenses incurred by Plaintiffs in connection with their payment of the Assessment, together with interest thereon at the default rate, plus A&E's attorneys' fees and costs as provided in Article 26, Sections 26.01-26.02 of the Lease, titled "Attorneys' Fees and Costs, Notice of Litigation."

WHEREFORE, Plaintiffs demand that judgment be entered against the Defendant as follows:

A. On all Causes of Action, awarding Plaintiffs a money judgment against Defendant, in the amount of $244,755.57, all costs and expenses incurred by Plaintiffs in connection with their payment of the Assessment, together with interest thereon at the default rate, attorneys' fees and costs;

B. Awarding such other and further relief as this Court deems just and proper.

DATED: New York, New York
April 2, 2008

COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.
A Professional Corporation
Attorneys for Plaintiffs, A&E Partners Holding, LLC and A&E Partners Holding I, LLC

By: ______________________________
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45519/0001-3109808v1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

A&E PARTNERS HOLDING, LLC and A&E PARTNERS HOLDING I, LLC,

Plaintiffs,

-against-

INDEX NO.

IAC/INTERACTIVE CORP. f/k/a USA INTERACTIVE,

Defendant.

SUMMONS AND COMPLAINT

LEO V. LEYVA, ESQ.
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Attorneys for A&E Partners Holding, LLC and A&E Partners Holdings I, LLC

Service of a copy of the within SUMMONS AND COMPLAINT is hereby admitted.

Dated: April 2, 2008

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Attorneys for A&E Partners Holding, LLC and A&E Partners Holdings I, LLC